

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DEBBORAH REDDEN and CHARLES	)	
REDDEN, husband and wife and their	)	No. 62172-6-I
marital community composed thereof,	)	
	)	DIVISION ONE
Appellants,	)	
	)	
v.	)	
	)	
SNOHOMISH COUNTY, a municipality	)	UNPUBLISHED
and/or some other form or legal entity;	)	
NORTH SOUND REGIONAL	)	FILED: <u>August 24, 2009</u>
SUPPORT NETWORK; NORTH	)	
SOUND MENTAL HEALTH	)	
ADMINISTRATION REGIONAL	)	
SUPPORT NETWORK; SKAGIT	)	
COUNTY, a municipality and/or other	)	
form or legal entity,	)	
	)	
Respondents.	)	
	)	
	)	

Cox, J. — With limited exceptions, there is generally no duty to prevent a third party from intentionally harming another.<sup>1</sup> Here, Deborah Redden fails in her burden to show the existence of a duty owed to her by either Snohomish County or North Sound Regional Support Network. Accordingly, the trial court properly dismissed those defendants on summary judgment. We affirm.

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<sup>1</sup> Niece v. Elmview Group Home, 131 Wn.2d 39, 43, 929 P.2d 420 (1997); Petersen v. State, 100 Wn.2d 421, 426, 671 P.2d 230 (1983).

In July 2003, Redden's employer, Compass Health, assigned her to work as an Activity Director/Recreational Therapist at the Evaluation and Treatment Center (E&T Center) in Mukilteo.

The E&T Center serves as a residential inpatient facility for residents of Snohomish County who are involuntarily committed for mental health treatment. Snohomish County owns the building in which the E&T Center is located.

Snohomish County entered into a contract with North Sound Regional Support Network under which North Sound would make the County's mortgage payments on the building in exchange for use of the building as an evaluation and treatment center. North Sound is a group of county authorities that have entered into joint operating agreements to contract with the Department of Social and Health Services to operate a single managed system of services for mentally ill persons living in Island, San Juan, Skagit, Snohomish, and Whatcom counties.

North Sound then independently contracted with the Associated Provider Network (APN) to operate the facility, with APN designating which individual organization would provide direct services. APN assumed the obligation to hire and train all employees necessary to staff and manage assaultive behavior at the E&T Center. Compass Health was the individual agency that contracted to operate the E&T Center under the APN contract with North Sound.

Redden alleges that on July 22, 2003, two residents of the E&T Center assaulted her while she was at work. Redden and her husband, Charles

Redden, brought this action against the County and North Sound for negligence, gross negligence, and negligent entrustment. She alleged that the defendants had a duty to provide a safe work environment, adequate physical security, and adequate supervision, and were vicariously liable for the injuries she sustained.

The County and North Sound separately moved for summary judgment, arguing that they did not have a duty to protect Redden from the harm caused by E&T Center residents. The trial court granted the motions.

Redden appeals.

### **DUTY OF CARE**

Redden argues that the trial court erred in dismissing her claims against Snohomish County and North Sound on summary judgment because they had a duty to protect her. Redden argues that she was a foreseeable victim of the conduct of two individuals with whom the County had a “special relationship.” We disagree.

A motion for summary judgment may be granted when there is no genuine issue as to any material fact, and the moving party is entitled to a judgment as a matter of law.<sup>2</sup> All facts and reasonable inferences are viewed in the light most favorable to the nonmoving party.<sup>3</sup>

We review a trial court’s summary judgment order de novo.<sup>4</sup>

### *Special Relationships*

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<sup>2</sup> CR 56(c).

<sup>3</sup> Atherton Condo. Apartment-Owners Ass’n Bd. of Directors v. Blume Dev. Co., 115 Wn.2d 506, 516, 799 P.2d 250 (1990).

<sup>4</sup> Folsom v. Burger King, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

“It is well settled that an essential element in any negligence action is the existence of a legal duty which the defendant owes to the plaintiff.”<sup>5</sup> The existence of a legal duty is a question of law and depends on mixed considerations of logic, common sense, justice, policy, and precedent.<sup>6</sup>

As a general rule, there is no duty to prevent a third party from intentionally harming another.<sup>7</sup> Courts have recognized two types of “special relationships” that are exceptions to this general rule. A duty arises where:

“(a) a special relation exists between the [defendant] and the third person which imposes a duty upon the [defendant] to control the third person’s conduct, or

(b) a special relation exists between the [defendant] and the other which gives the other a right to protection.”<sup>[8]</sup>

Redden has not provided relevant authority to show how the defendants here fall within the special relationship exceptions.

The first type of special relationship cited by Redden is the type that gives one party a right to protection, a duty “based on the liable party’s assumption of responsibility for the safety of another.”<sup>9</sup> Our supreme court found this type of special relationship in Niece v. Elmview Group Home.<sup>10</sup>

There, a developmentally disabled woman living in a private group home

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<sup>5</sup> Petersen, 100 Wn.2d at 425-26; see also Christensen v. Royal School Dist. No. 160, 156 Wn.2d 62, 66, 124 P.3d 283 (2005) (“A showing of negligence requires proof of the following elements: (1) existence of a legal duty, (2) breach of that duty, (3) an injury resulting from the breach, and (4) proximate cause.”).

<sup>6</sup> Christensen, 156 Wn.2d at 67.

<sup>7</sup> Niece, 131 Wn.2d at 43.

<sup>8</sup> Id. at 43 (quoting Petersen, 100 Wn.2d at 426 (quoting Restatement (Second) of Torts § 315 (1965))).

<sup>9</sup> Id. at 46.

<sup>10</sup> 131 Wn.2d 39, 929 P.2d 420 (1997).

brought an action for damages against the home after she was sexually assaulted by a staff member.<sup>11</sup> The court held that the special relationship between a group home for developmentally disabled persons and its vulnerable residents “creates a duty of reasonable care, owed by the group home to its residents, to protect them from all foreseeable harms.”<sup>12</sup> The court acknowledged that “[t]he duty to protect another person from the intentional or criminal actions of third parties arises where one party is ‘entrusted with the well being of another.’”<sup>13</sup> This duty, the court said, “is limited only by the concept of foreseeability.”<sup>14</sup>

In reaching this conclusion, the court examined several other recognized special relationships. For example, the court noted, a school has a duty to protect students in its custody from reasonably anticipated dangers.<sup>15</sup> A hospital has a special relationship with its patients, including a duty to safeguard a suicidal patient in a psychiatric ward from the reasonably foreseeable risk of self-inflicted harm through escape.<sup>16</sup> A convalescent center has a general duty to protect its vulnerable residents from reasonably foreseeable risk of harm, including criminal actions by visitors.<sup>17</sup> In each of these relationships, the

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<sup>11</sup> Id. at 41.

<sup>12</sup> Id. at 51.

<sup>13</sup> Id. at 50 (quoting Lauritzen v. Lauritzen, 74 Wn. App. 432, 440, 874 P.2d 861(1994)).

<sup>14</sup> Id. (citing Christen v. Lee, 113 Wn.2d 479, 492, 780 P.2d 1307 (1989)).

<sup>15</sup> Id. at 44 (citing McLeod v. Grant County Sch. Dist. No. 128, 42 Wn.2d 316, 320, 255 P.2d 360 (1953)).

<sup>16</sup> Id. at 45 (citing Hunt v. King County, 4 Wn. App. 14, 20, 481 P.2d 593 (1971)).

<sup>17</sup> Id. (citing Shepard v. Mielke, 75 Wn. App. 201, 205-06, 877 P.2d 220 (1994)).

special tort duties “are based on the liable party’s assumption of responsibility for the safety of another.”<sup>18</sup>

Redden cites Niece to support her position that a special relationship existed between the County and the residents of the E&T Center. Redden also argues that the special relationship exists between the residents and the County because the County’s duties to the inmates are nondelegable. But the existence of a special relationship between the residents of the E&T Center and any other party, as described in Niece, is not relevant to the question of the County’s duty to Redden.

Here, the record does not show that the County had assumed responsibility for Redden’s safety or was entrusted with her well-being. Unlike the plaintiff in Niece, Redden has not shown that she was vulnerable. Redden has not otherwise shown that the County has **any** relationship with her, an employee of Compass Health. The special relationship doctrine as applied in Niece does not apply to Redden.

Redden also cites the second type of special relationship exception. She argues that the County has a duty to take precautions to control the conduct of the residents held at the E&T Center to insure that the residents do not injure others.

At oral argument, Redden cited Petersen v. State<sup>19</sup> for the first time. Also at oral argument, Redden urged that we extend the rule of that case to grant

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<sup>18</sup> Id. at 46 (citing Lauritzen, 74 Wn. App. at 440).

<sup>19</sup> 100 Wn.2d 421, 671 P.2d 230 (1983).

relief in this case.

In Petersen, the plaintiff was injured when her car was struck by another vehicle driven by a recently released Western State Hospital psychiatric patient.<sup>20</sup> The patient had been involuntarily committed to the state hospital.<sup>21</sup> The patient's psychiatrist, Dr. Miller, recognized that the patient was potentially dangerous and that the patient's behavior would be unpredictable.<sup>22</sup> Dr. Miller also testified that he knew the patient was reluctant to take antipsychotic medications and that the patient was quite likely to revert to using drugs that caused him to have delusions and hallucinations.<sup>23</sup> The plaintiff sued the State, arguing that it was negligent either by failing to seek additional confinement time for the patient or by failing to disclose information about his probation violation.<sup>24</sup> The court concluded that the State, through Dr. Miller, had "a duty to take reasonable precautions to protect anyone who might foreseeably be endangered" by the patient's drug-related mental problems.<sup>25</sup> Because Dr. Miller failed to seek additional commitment time for the patient or take other precautions, the court affirmed the jury verdict in favor of the plaintiff.<sup>26</sup>

Taggart v. State<sup>27</sup> clarified Petersen and the type of special relationship that creates a duty to control the conduct of another to prevent harm. In

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<sup>20</sup> Id. at 422-23.

<sup>21</sup> Id. at 423-24.

<sup>22</sup> Id. at 428.

<sup>23</sup> Id.

<sup>24</sup> Id. at 424.

<sup>25</sup> Id. at 428, 432.

<sup>26</sup> Id. at 428-29, 446.

<sup>27</sup> 118 Wn.2d 195, 822 P.2d 243 (1992).

Taggart, two persons injured by parolees in separate assaults raised claims against the State and its agents for allegedly negligent parole release and supervision.<sup>28</sup> In evaluating whether the State had a duty to the plaintiffs, the court recognized Petersen as a controlling case. It explained

Petersen . . . stands for the proposition that a “special relation” exists between a state psychiatrist and his or her patients, such that when the psychiatrist determines, or pursuant to professional standards should determine, that a patient presents a reasonably foreseeable risk of serious harm to others, the psychiatrist “has a duty to take reasonable precautions to protect anyone who might foreseeably be endangered.”<sup>[29]</sup>

The court concluded that “the relationship between a parole officer and the parolees he or she supervises creates a similar duty for the officers.”<sup>30</sup> The court noted that this type of duty will be imposed “only upon a showing of a ‘definite, established, and continuing relationship between the defendant and the third party.’”<sup>31</sup>

Next, the Taggart court observed, “Foreseeability is normally an issue for the jury, but it will be decided as a matter of law where reasonable minds cannot differ.”<sup>32</sup> There, evidence showed that both parolees had extensive criminal histories involving alcohol abuse and violence.<sup>33</sup> The trial court erred in dismissing the claims for negligence because “the questions of foreseeability were not so one-sided that they should have been decided by the trial courts.”<sup>34</sup>

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<sup>28</sup> Id. at 198.

<sup>29</sup> Id. at 218-19 (quoting Petersen, 100 Wn.2d at 428).

<sup>30</sup> Id. at 219.

<sup>31</sup> Id. (quoting Honcoop v. State, 111 Wn.2d 182, 193, 759 P.2d 1188 (1988)).

<sup>32</sup> Id. (quoting Christen, 113 Wn.2d at 492).

<sup>33</sup> Id. at 224-25.



Reasonable juries could have found that the plaintiffs' injuries were foreseeable based on the evidence showing the two parolees' criminal tendencies.<sup>35</sup>

In Hertog v. City of Seattle,<sup>36</sup> the court held that under Taggart, the City and its probation counselors have a duty to control municipal court probationers to protect others from reasonably foreseeable harm resulting from the probationers' dangerous propensities.<sup>37</sup> The court recognized that probation counselors are "clearly in charge of monitoring" probationers "to ensure that conditions of probation are being followed," and have a duty to report violations to the court.<sup>38</sup> The court also noted that "[t]he issue is not whether misdemeanants as a class" might pose a risk of harm, but instead, the "issue is ***whether a particular individual*** poses such a risk of harm."<sup>39</sup>

Here, unlike the plaintiffs in Petersen, Taggart, and Hertog, Redden presented no evidence that any employee of the County had a "definite, established, and continuing relationship" with the third persons who allegedly harmed her.<sup>40</sup> Redden also failed to present evidence regarding the particular individuals who allegedly attacked and injured her, which the cases clearly require for purposes of evaluating the foreseeability of the harm. The trial court correctly held that the County did not owe Redden a duty under this line of

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<sup>34</sup> Id. at 224.

<sup>35</sup> Id. at 224-25.

<sup>36</sup> 138 Wn.2d 265, 979 P.2d 400 (1999).

<sup>37</sup> Id. at 281 (citing Taggart, 118 Wn.2d 195).

<sup>38</sup> Id. at 279.

<sup>39</sup> Id. at 280 (citing Restatement (Second) of Torts § 319 (1965)) (emphasis added).

<sup>40</sup> Taggart, 118 Wn.2d at 219.

special relationship cases. We decline to extend the rule of these cases to apply to the facts of this case.

Redden cites no authority to support her position that if a special relationship exists as described in Niece, the party holding a duty to protect the other then automatically has the type of definite, established, and continuing relationship that creates a duty to protect third persons as described in Petersen, Taggart, and Hertog.

#### *Nondelegable Duty*

Redden argues that summary judgment was improper because the County's duty to protect reasonably foreseeable victims of involuntarily committed patients is nondelegable. We disagree.

Redden's argument relies on Shea v. City of Spokane.<sup>41</sup> There, Shea sued the City for negligence for injuries he sustained while in custody. The court recognized that a city has a "positive duty" to provide health care for prisoners whom it takes into custody, "arising out of the special relationship that results when a custodian has complete control over a prisoner deprived of liberty."<sup>42</sup> The nature of the special relationship "is such as to render nondelegable the duty of providing for the health of a prisoner."<sup>43</sup> "Stated another way, the duty is so intertwined with the responsibility of the City as custodian that it cannot be

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<sup>41</sup> 17 Wn. App. 236, 562 P.2d 264 (1977).

<sup>42</sup> Id. at 242.

<sup>43</sup> Id.

relieved of liability for the negligent exercise of that duty by delegating it to an 'independent contractor' physician."<sup>44</sup>

As discussed above, the existence of a special relationship as described in Niece between the County and residents of the E&T Center is not relevant to the question of whether the County had or breached any duty to Redden. As a result, the question of whether the County can properly delegate this type of duty is immaterial. And even if Redden is correct in arguing that the County cannot delegate its duty to protect third persons as described in Taggart and Hertog, she did not produce evidence of a definite, continuing, and established relationship to survive summary judgment on that issue, as discussed above.

*Defendant North Sound*

Redden asserts that defendant North Sound owes a duty to her because it is "simply an alter-ego of the County." Redden cites no authority or factual basis for this conclusory assertion.

In any event, because we have concluded that no special relationship exposes the County to liability in this case, it is not necessary for us to reach the issue of whether North Sound is an alter-ego of the County. Redden has not presented any facts upon which North Sound could be held liable apart from those she presented against the County. We have already explained why those facts do not give rise to a duty here.

We affirm the summary judgment orders.

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<sup>44</sup> Id.

Cox, J.

WE CONCUR:

Jan, J.

Schindler, CT